

AUG 17 2001

DEPT. OF INSURANCE
BY CB

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:

AMERICAN REPUBLIC INSURANCE COMPANY,

NAIC #60836,

Respondent

) Docket No. 01A-199-INS

) **CONSENT ORDER**

Examiners for the Department of Insurance (the "Department") conducted a market conduct examination of American Republic Insurance Company ("American Republic"). The Report of Examination of the Market Conduct Affairs of American Republic alleges that American Republic has violated A.R.S. §§20-191, 20-448.01, 20-461, 20-462, 20-1379, 20-2106, 20-2110, 20-2535, 20-2536 and A.A.C. R20-6-215, R20-6-801 and R20-6-1203.

American Republic wishes to resolve this matter without formal proceedings, admits that the following Findings of Fact are true, and consents to the entry of the following Conclusions of Law and Order.

FINDINGS OF FACT

1. American Republic is authorized to transact life and disability insurance pursuant to a Certificate of Authority issued by the Director.

2. The Examiners were authorized by the Director to conduct a market conduct examination of American Republic. The on-site examination covered the time period from July 1, 1998 through March 31, 2000, and was concluded on July 20, 2000. Based on the findings the Examiners prepared the "Report of Examination of the Market Conduct Affairs of American Republic Insurance Company", dated July 20,

1 2000.

2 3. The Examiners reviewed 17 of 17 appeals processed by the Company or
3 its utilization review agent during the time frame of the examination and found as
4 follows:

5 a. American Republic failed on one informal reconsideration and
6 eight formal appeals to mail a written acknowledgment and health care appeal
7 information packet to the member and the member's treating provider within five
8 business days after receiving the appeal request.

9 b. American Republic failed on seven formal appeals to have a
10 health care professional review the appeal and render a decision.

11 c. American Republic failed on four formal appeals to notify the
12 member in writing of the Company's decision within 60 days of receipt of the appeal.

13 d. American Republic denied five formal appeals but failed to provide
14 notice to the member and the treating provider of the option to proceed after the formal
15 appeal process to an external independent review.

16 e. American Republic denied one claim file on the basis of a
17 preexisting condition exclusion, which was later deemed to be not applicable, but the
18 claim was not reprocessed and paid.

19 4. The Examiners reviewed all application, policy forms and riders in use by
20 the Company during the time frame of the examination and found as follows:

21 a. American Republic utilized one reinstatement application form that
22 failed to specify the length of time that the medical authorization remains valid and
23 failed to advise the individual that the individual or the individual's authorized
24 representative is entitled to receive a copy of the authorization form.

25 b. American Republic used an HIV-related test consent form that was

1 not filed or approved by the Director.

2 5. The Examiners reviewed 59 of 563 applications for individual major
3 medical policies that were declined, 48 of 151 applications requesting that dependents
4 be added to coverage under inforce individual major medical policies and 14 of 14
5 declined applications requesting that dependents be added to coverage under inforce
6 individual major medical policies during the time frame of the examination and found
7 that American Republic had information that 15 of the applicants might be HIPAA
8 eligible but failed to conduct an investigation to determine if the applicants were
9 Eligible Individuals and to advise them of HIPAA and their possible right to a
10 guaranteed issue policy.

11 6. The Examiners reviewed 56 of 777 individual applications for major
12 medical insurance that were closed by the Company or withdrawn at the applicant's
13 request during the time frame of the examination and found that American Republic
14 made an adverse underwriting decision in seven files but failed to provide the applicant
15 with the specific reason for the decision or advise that upon request the specific reason
16 could be obtained, and failed to provide the applicant with a Summary of Rights.

17 7. The Examiners reviewed 25 of 94 policies that lapsed due to non-
18 payment of premium during the time frame of the examination and found that:

19 a. American Republic failed to credit premium payment on three
20 policies as of the date of the postmark of the mailing, resulting in three policies
21 improperly lapsing for non-payment of premium and subsequently being reinstated
22 with a lapse in coverage.

23 b. American Republic sent letters on two claims denying benefits on
24 the basis of a preexisting condition imposed due to a lapse in coverage when the
25 insured's policy had been improperly lapsed for non-payment of premium.

1 8. The Examiners reviewed 505 of 39,896 claims under individual major
2 medical policies processed by the Company during the time frame of the examination
3 and found that:

4 a. American Republic failed to acknowledge receipt of 33 claims
5 within ten working days of notification of claim.

6 b. American Republic failed to pay interest on three claims not paid
7 within 30 days after receipt of an acceptable proof of loss.

8 9. The Examiners reviewed 327 of 327 claims paid for services provided by
9 chiropractic physicians during the time frame of the examination and found that
10 American Republic paid 301 claims for services provided by chiropractic physicians at
11 out-of-network rates when no chiropractic physicians were available within the network
12 and the services should have been paid at the same rates as in-network services.

13 10. The Examiners reviewed 46 of 46 life insurance policies issued by the
14 Company during the time frame of the examination that replaced existing life insurance
15 policies and found that:

16 a. American Republic Company failed on four files to provide a
17 statement signed by the agent as to whether he knew replacement might be involved
18 in the transaction.

19 b. American Republic failed on six files to require from their agent,
20 with an application involving replacement, a copy of the "Notice Regarding
21 Replacement of Life Insurance" signed by the applicant.

22 c. American Republic failed on 31 files to send the existing insurer a
23 Notice Regarding Replacement of Life Insurance within three working days of the date
24 the application was received at its home or regional office.

25 12. American Republic's failure to pay interest on claims not paid within 30

1 days resulted in three insureds being underpaid a total of \$144.81. American
2 Republic's failure to pay chiropractic claims at the in-network level resulted in
3 underpayments to the 301 claimants totaling \$21,608.27. The Company has
4 reprocessed the 301 claims and paid \$21,608.27 to the claimants, plus \$968.03 in
5 interest.

6 CONCLUSIONS OF LAW

7 1. American Republic violated A.R.S. §20-191(A) by failing to credit
8 premium payment as of the date that it was deposited in the United States mail.

9 2. American Republic violated A.A.C. R20-6-801(D)(1) by failing to pay
10 claims that were improperly denied due to a preexisting condition exclusion.

11 3. American Republic violated A.R.S. §20-448.01(B) and A.A.C. R20-6-
12 1203(C) by using an HIV-related testing consent form that was not filed or approved by
13 the Director.

14 4. American Republic violated A.R.S. §§20-461(A)(1), 20-461(A)(6), 20-
15 461(B) and A.A.C. R20-6-801(D)(1) by paying claims for the services of chiropractic
16 physicians at out-of-network rates when no chiropractors were available in the
17 network.

18 5. American Republic violated A.R.S. §20-461(A)(2) and A.A.C. R20-6-
19 801(E)(1) by failing to acknowledge receipt of a claim within ten working days after
20 receipt of notification of claim. The Company and the Department acknowledge and
21 agree that pursuant to A.R.S. § 20-3102, as of January 1, 2001, insurers have thirty
22 (30) or the contractually provided time period to acknowledge and either approve or
23 deny a clean claim from a health care provider for all such claims with a date of service
24 of January 1, 2001 or subsequent to January 1, 2001.

25 6. American Republic violated A.R.S. §20-462(A) by failing to pay interest

1 on a claim not paid within 30 days after receipt of properly executed proof of loss. The
2 Company and the Department acknowledge and agree that pursuant to A.R.S. § 20-
3 3102, as of January 1, 2001, the Company must approve or deny provider claims
4 within thirty (30) days of receipt or the contractually provided time period. Interest is to
5 be paid at the legal rate on provider claims not paid within thirty (30) days following the
6 date of claim approval.

7 7. American Republic violated A.R.S. §20-1379(A) by having information
8 indicating that individuals might be HIPAA eligible but failing to conduct an
9 investigation to determine if the applicant was an Eligible Individual and to advise him
10 of HIPAA and his possible right to a guaranteed issue policy.

11 8. American Republic violated A.R.S. §20-2106 by utilizing reinstatement
12 application forms that failed to specify the length of time that the medical authorization
13 remained valid and that failed to advise the individual that the individual or the
14 individual's authorized representative is entitled to receive a copy of the authorization
15 form.

16 9. American Republic violated A.R.S. §20-2110(A) by failing to provide
17 applicants for insurance that were the subject of adverse underwriting decisions with
18 written notice of the specific reason for the adverse underwriting decision or advising
19 them that upon request the specific reason could be obtained, and failing to provide
20 Summaries of Rights.

21 10. American Republic violated A.R.S. §§20-2535(B) and 20-2536(B) by
22 failing to mail a written acknowledgment, including the information packet described in
23 A.R.S. §20-2533, to the member and the member's treating provider within five
24 business days after receiving the request for informal reconsideration and formal
25 appeal.

1 11. American Republic violated A.R.S. §20-2536(D) by failing to have a
2 physician or other licensed health care professional review and render decisions on
3 formal appeals. The Company and the Department acknowledge and agree that
4 pursuant to an amendment of A.R.S. § 20-2536(D), as of January 1, 2001, the
5 Company must have a licensed health care provider, physician or other health care
6 professional render a decision only for appeals of denials based on medical necessity.

7 12. American Republic violated A.R.S. §20-2536(E)(2) by failing to notify
8 members in writing of their formal appeal decision within 60 days after receipt of the
9 written appeal.

10 13. American Republic violated A.R.S. §20-2536(G) by failing to provide the
11 member with notice of the option to proceed to an external independent review
12 following the denial after the formal appeal.

13 14. American Republic violated A.A.C. R20-6-215(F)(2)(b) by failing to
14 require a statement signed by the agent as to whether he knew replacement might be
15 involved in the life insurance transaction.

16 15. American Republic violated A.A.C. R20-6-215(F)(3)(a) by failing to
17 require from their agent, with a life insurance application involving replacement, a copy
18 of the "Notice Regarding Replacement of Life Insurance" signed by the applicant.

19 16. American Republic violated A.A.C. R20-6-215(F)(3)(c) by failing to send
20 the existing insurer a "Notice Regarding Replacement of Life Insurance" within three
21 working days of the date the application was received at its home or regional office.

22 17. Grounds exist for the entry of the following Order, in accordance with
23 A.R.S. §§20-220, 20-456 and 20-2117.

24

25

1 ORDER

2 **IT IS ORDERED THAT:**

3 1. American Republic shall cease and desist from:

4 a. Failing to credit premium payments as of the date that they were
5 deposited in the United States mail.

6 b. Using an HIV-related testing consent form that is not filed or
7 approved by the Director.

8 c. Paying claims for services of chiropractic physicians at out-of-
9 network rates when no chiropractors are available in the network.

10 d. Failing to acknowledge receipt of a non-provider claim within ten
11 working days. The Company and the Department acknowledge and agree that
12 pursuant to A.R.S. § 20-3102, as of January 1, 2001, insurers have thirty (30) or the
13 contractually provided time period to acknowledge and either approve or deny a clean
14 claim from a health care provider for all such claims with a date of service of January
15 1, 2001 or subsequent to January 1, 2001.

16 e. Failing to pay interest on a non-provider claim not paid within 30
17 days after receipt of an acceptable proof of loss. The Company and the Department
18 acknowledge and agree that pursuant to A.R.S. § 20-3102, the Company must
19 approve or deny claims from a health care provider within thirty (30) days of receipt or
20 the contractually provided time period. Interest is to be paid at the legal rate on
21 provider claims not paid within thirty (30) days following the date of claim approval.

22 f. Failing to determine if applicants are eligible individuals, advise
23 them of HIPAA and their right to a guaranteed issued policy.

24 g. Utilizing reinstatement application forms that fail to specify the
25 length of time that the medical authorization remains valid and that fail to advise the

1 individual that the individual or the individual's authorized representative is entitled to
2 receive a copy of the authorization form.

3 h. Failing to provide applicants who are subject to an adverse
4 underwriting decision with written notice of the specific reason for the adverse
5 underwriting decision or advising them that upon request the specific reason could be
6 obtained and failing to provide a Summary of Rights.

7 i. Failing to mail a written acknowledgment, including the information
8 packet described in A.R.S. §20-2533 if required, to the member and the member's
9 treating provider within five business days after receipt of requests for informal
10 reconsideration and formal appeal. The Company and the Department acknowledge
11 and agree that pursuant to an amendment of A.R.S. § 2533, an information packet
12 must be sent to the member in all such situations and to the treating provider on if such
13 provider requests the information packet.

14 j. Failing to require a physician or other licensed health care
15 professional to review and render formal appeal decisions involving medical necessity
16 determinations. The Company and the Department acknowledge and agree that
17 pursuant to an amendment of A.R.S. § 20-2536(D), as of January 1, 2001, the
18 Company must have a licensed health care provider, physician or other health care
19 professional render a decision only for appeals of denials based on medical necessity.

20 k. Failing to notify members in writing of their decision within 60 days
21 after receipt of formal appeals.

22 l. Failing to provide the member with notice of the option to proceed
23 to an external independent review after denial of the formal appeal.

24 m. Failing to require a statement signed by agents as to whether they
25 know replacement might be involved in the life insurance transaction.

1 n. Failing to require from their agents, with applications involving
2 replacement, a copy of the "Notice Regarding Replacement of Life Insurance" signed
3 by the applicant.

4 o. Failing to send the existing insurer a "Notice Regarding
5 Replacement of Life Insurance" within three working days of the date the application is
6 received at its home or regional office.

7 2. Within 90 days of filed date of this Order, American Republic shall submit
8 to the Arizona Department of Insurance, for approval, evidence that corrections have
9 been implemented and communicated to the appropriate personnel regarding all of the
10 items listed in Paragraph one of the Order section of this Consent Order. Evidence of
11 corrective action and communication thereof includes but is not limited to memos,
12 bulletins, E-mails, correspondence, procedures manuals, print screens and training
13 materials.

14 3. Within 90 days of the filed date of this Order, American Republic shall
15 pay claim number 15798864, plus interest at the rate of 10% per annum from the date
16 that the claim was received until the date of payment, because the claim was
17 improperly denied on the basis of a preexisting condition exclusion.

18 4. Within 90 days of the filed date of this Order, American Republic shall
19 document to the Department that it has paid interest on claim number 16344186.
20 Interest shall be calculated at the rate of 10% per annum, from the date the claim was
21 received by the Company, to the date of payment.

22 5. Each payment made in accordance with Items 3 and 4 above shall be
23 accompanied by a letter to the insured in a form previously approved by the Director.
24 A list of payments, giving the name and address of each party paid, the amount of the
25 payment, the amount of interest paid, and the date of payment, shall be provided to

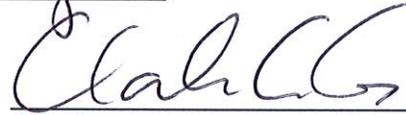
1 the Department within 90 days of the filed date of this Order.

2 6. The Department shall be permitted, through authorized representatives,
3 to verify that American Republic has complied with all provisions of this Order.

4 7. American Republic shall pay a civil penalty of \$22,500 to the Director for
5 deposit in the State General Fund in accordance with A.R.S. §20-220(B). This civil
6 penalty shall be provided to the Market Conduct Examinations Section of the
7 Department prior to the filing of this Order.

8 8. The Report of Examination of the Market Conduct Affairs of American
9 Republic dated July 20, 2000 including the letter submitted in response to the Report
10 of Examination, shall be filed with the Department after the Director has filed this
11 Order.

12 DATED at Phoenix, Arizona this 14th day of August, 2001.

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14 _____
15 Charles R. Cohen
16 Director of Insurance
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1 **CONSENT TO ORDER**

2 1. American Republic Insurance Company has reviewed the foregoing
3 Order.

4 2. American Republic Insurance Company admits the jurisdiction of the
5 Director of Insurance, State of Arizona, admits the foregoing Findings of Fact, and
6 consents to the entry of the Conclusions of Law and Order.

7 3. American Republic Insurance Company is aware of its right to a hearing,
8 at which it may be represented by counsel, present evidence and cross-examine
9 witnesses. American Republic Insurance Company irrevocably waives its right to such
10 notice and hearing and to any court appeals related to this Order.

11 4. American Republic Insurance Company states that no promise of any
12 kind or nature whatsoever was made to it to induce it to enter into this Order and that it
13 has entered into this Order voluntarily.

14 5. American Republic Insurance Company acknowledges that the
15 acceptance of this Order by the Director of Insurance, State of Arizona, is solely to
16 settle this matter against it and does not preclude any other agency or officer of this
17 state or its subdivisions or any other person from any other civil or criminal
18 proceedings, whether civil, criminal, or administrative, as may be appropriate now or in
19 the future.

20 6. Sandy J. Roy, who holds the office of
21 Sen. V.P., CFO & Treasurer of American Republic Insurance Company, is
22 authorized to enter into this Order for it and on its behalf.

23 **AMERICAN REPUBLIC INSURANCE COMPANY**

24 Aug. 9, 2001
25 Date

By: Sandy J. Roy

1 COPY of the foregoing mailed/delivered
2 This 17th day of August 2001, to:

3 Sara Begley
4 Deputy Director
5 Mary Butterfield
6 Assistant Director
7 Consumer Affairs Division
8 Paul J. Hogan
9 Chief Market Conduct Examiner
10 Market Conduct Examinations Division
11 Deloris E. Williamson
12 Assistant Director
13 Rates & Regulations Division
14 Alexandra Shafer
15 Assistant Director
16 Life & Health Division
17 Steve Ferguson
18 Assistant Director
19 Financial Affairs Division
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